

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES**

May 27, 2014

Those present at 7:00 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 2, Todd Ruckle
District 3, Rob Gifford
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
City Solicitor Bruce Herron
Public Works and Water Resources Director Tom Coleman
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
Finance Director Lou Vitola
Parks & Recreation Director Charlie Emerson
Planning & Development Director Maureen Feeney Roser

EXECUTIVE SESSION

- A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (6) for the purpose of a strategy session involving legal advice or opinion from an attorney-at-law with respect to pending or potential litigation and discussion of the content of documents, excluded from the definition of “public record” in 29 *Del. C.* §10002 where such discussion may disclose the contents of such documents.

Council entered into Executive Session at 6:08 p.m. and returned to the table at 6:52 p.m. Ms. Sierer advised Council concluded the Executive Session and no action was needed at this time.

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance.

2. LEAD360 CHALLENGE JEFFERSON AWARDS PRESENTATION

06:27

Michelle Fidance, National Director for the Jefferson Awards, spoke on behalf of the Lead360 Challenge which recognized outstanding youth service projects. Recipients from the University of Delaware Build On group (one of the top three groups) were unable to attend a previous ceremony and received their award from Mayor Sierer.

3. CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING PRESENTATION

10:18

Ms. Sierer congratulated the Finance Department for receiving the award for excellence in financial reporting for its Comprehensive Annual Financial Report for the fiscal year ended 12/31/12. The Certificate of Achievement is the highest form of recognition in the area of government accounting and financial reporting and its attainment is a significant accomplishment by a government. The Government Finance Officers Association of the United States and Canada honored the City of Newark with this award. Deputy Director of Finance Wilma Garriz was credited for achieving the award for the fourth consecutive year along with Jim Smith, Debi Keeley, Deborah Kupper and Daina Montgomery. Ms. Houck and Mr. Vitola thanked staff for their efforts.

4. MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO REMOVE ITEM 3-A-2 FROM THE AGENDA.

14:01

MOTION PASSED. VOTE: 5 to 2.

Aye: Chapman, Hadden, Markham, Ruckle, Sierer.

Nay: Gifford, Morehead.

Mr. Morehead wanted to discuss the item. Ms. Houck did not have an update. Ms. Sierer recommended looking at the motion and then Mr. Morehead could discuss that as part of his discussion during his time to speak as a Council member.

5. MOTION BY MS. HADDEN, SECONDED BY MR. CHAPMAN: TO MOVE ITEM 7-B TO FOLLOW THE AWARDS PRESENTATION.

15:35

MOTION PASSED. VOTE: 7 to 0.

Aye: Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.

Nay: 0.

6. **7-B. CONSIDERATION OF APPROVAL OF REAL ESTATE AGREEMENT WITH EXPONENTIAL DEVELOPMENT GROUP, LLC/PARKING GARAGE PROJECT**
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16:05

Mark Dunkle, Esq. presented the signed Agreement of Sale subject to Council's review and approval for the City's acquisition of the paved portion of 51 E. Main Street. He was hired by the City as special legal counsel 11 months ago with the assignment of assisting the City in acquiring 51 E. Main Street. The assignment came with advice that the property was not for sale and that the owners were not interested in selling, so it was somewhat of a challenge. The acquisition was part of the City's quest to build a parking garage. The contract took 11 months to negotiate – the City's direction to Mr. Dunkle was to try to acquire the property by agreement and avoid using the power of eminent domain. That was not only a good practice but was also the law of the State that you make every reasonable effort to negotiate voluntary acquisition of property for public use. The agreement involved much negotiation. Mr. Dunkle commended legal counsel Douglas Hershman for the owners and the owners themselves and City staff for defining the objective and for being flexible in reaching the signed agreement. The agreement was to either swap land owned by the City in Lot 6 for the desired land in Lot 1 or to purchase the land in Lot 1 for \$1.2 million. Mr. Dunkle said the contract was a win-win in achieving the goal. The contract must be approved by Council.

Council Comments:

Mr. Markham noted Council had been looking at some way to have land to do a parking garage ever since he started on Council. This was basically a land swap as Exponential gets a piece of property off Delaware Avenue in exchange for the piece of property in the middle of the City's parking area. According to Mr. Dunkle there was a separate agreement related to the bookstore project regarding UD land. So it was a multi-party cooperative effort to get to this point in time.

Mr. Gifford clarified that in addition to the land swap there was an option for cash and the City would purchase the property. He asked for further explanation about how the parking spaces fit into the agreement. Mr. Dunkle explained that 11 months of negotiation boiled down to one final agreement. The incentive to reach an agreement with Exponential included allocation of parking permits in the instance of a cash purchase or a land swap. There were 75 total parking permits with 45 spaces allocated in the parking garage (if constructed) and 30 surface space permits.

Mr. Morehead commented about the difference between the incentive for the cash option and the land swap option. Mr. Dunkle said the cash option was fewer parking spaces and they do not continue on. If the property is sold for cash the special treatment for the parking permits only last as long as the sellers own their property at 51 E. Main Street but once they sell, those rights go away. It would be different if they develop their property down the street on Delaware Avenue. Those parking rights

actually need to stay with that property because they would be part of the approval process. Mr. Morehead asked if Lot 6 would remain a parking lot if it was not developed. Mr. Dunkle advised once the title was traded and Parcel A (the EDG property) was acquired, and they took title to Parcel B (the Lot 6 property) they were free to sell it. The contract provided that type of assignment or “flip” cannot happen during the pendency of this contract. Mr. Morehead asked how many parking spaces were currently in Parcel A. Mr. Dunkle clarified there were 19. Lot 6 had 35 spaces.

Mr. Ruckle asked if there were any restrictions saying the City could lease this land out to someone else who wanted to build a parking garage. Mr. Dunkle stated there was no restriction on the City’s use of the land.

Mr. Gifford asked if the City would regain the 19 spaces in Lot 1 and then the 35 once the deal went through. Mr. Dunkle said when the deal goes through and the City builds the parking garage there would be a net gain overall of parking spaces. Mr. Dunkle said no, because if you went out today in Lot 1 it looked like one unified piece of property but part if it was leased.

Mr. Markham asked the typical number of spaces for a parking garage. Ms. Feeney Roser said 500. Mr. Markham said in terms of scale 75 vs. 500 was a significant gain in spaces. Ms. Feeney Roser said not all of those 75 parking permits would be in the parking garage and were being offered for sale. They were being offered at market rate with the guarantee for that many spaces.

Mr. Dunkle commended staff’s role and said they were in the top in the State.

Mr. Morehead asked who owned the rectangular parcel. Mr. Dunkle replied it was the University. The piece that was almost a square was to be deeded to the City as part of the bookstore agreement. According to Ms. Feeney Roser that would be the City’s when the garage was constructed. The City was now leasing that piece of the lot.

Mr. Gifford asked for an explanation of the direct need for the driveway piece to understand why the City needed to consider the deal. Mr. Haines explained there were four parcels making up Lot 1. This specific piece was both the entrance off of Main Street and the entrance off of Delaware Avenue. If there was an arrowhead that divided the parking lot, it was this parcel and it went from Main Street to Delaware Avenue. It was deceiving because it was so angular. Looking at the map and Delaware Avenue you see where the entrance is – their property went from there all the way down to Delaware Avenue. A number of design options were considered but to be able to have a perfectly rectangle parking garage was very efficient and allowed maximization of the space with a center ramp. The City would continue the intent to have a land lease with the Capano Management rented property to the far eastern side. Mr. Gifford said looking at the cash option we have been talking about other things like storm water management. Since the parking garage was a very expensive option for the City he asked if that should be discussed first before going ahead and have a potential \$1.2 million or \$1 million cash option that is taken – he wanted to be careful about spending that money up front when it is not clear to the newest Council members what the result would be on the City’s finances. Mr. Vitola said a high price tag can scare people. Just because something had a high price tag does not mean it cannot result in value for the City. Regardless of whether there is a cash payment or land swap option with that spread over 25 years, positive revenue was shown for every year of the analysis.

Regarding Mr. Gifford’s question about the latest study on whether extra parking spaces were required, Ms. Feeney Roser reported in 2011 Newark Development Trust requested an update to the 2006 Desmond study which they believed was too conservative. Desmond completed a one-day survey (on a Wednesday in October) of occupancy for parking spaces. They found a significant decrease in the number of occupied spaces both on street and in the on-street lots. The validity of that study was questioned and several things were different about it. Lot 6 was added to the inventory and was a relatively new metered lot with a two-hour limit. When the 2006 study was done it was a permitted parking lot being rented by the City and was full. A significant impact resulted from the fact that the Newark Shopping Center had reversed its no parking policy and had stopped towing vehicles. This reduced the number of people

parking at meters and municipal lots. Parking counts were done of the vehicles in there and found at 7 a.m. there were 75 cars parked there and went up to about 150 every day. The free parking was changed once again. Since 2011 a lot of downtown development was approved that will also impact the numbers. It was felt the original figures were more accurate than the 2011 figures and indicated the need for a 500 space garage. Also, the lack of business vacancies since 2011 should have an impact.

Public Comments:

Jeff Lawrence, District 3, was concerned about the City being involved in the parking business and the threat of eminent domain in the property sale to the City. He felt the money for the land purchase should be used for storm water improvements.

Jen Wallace, District 3, was concerned about the City spending money on what was not a necessity while storm water repairs were. She was concerned about the traffic impact of a parking garage. She asked for current statistics on parking capacity.

Miranda Wilson, District 4, disapproved regarding spending City tax dollars for a parking garage. She does not find parking to be an issue and would like Main Street to be more bike and pedestrian friendly by adding shade, benches and bike storage.

Mr. Vitola agreed the City should not be spending taxpayer dollars to construct a parking garage if there was a land purchase or land swap. A parking fund was an enterprise fund and even if the \$1.5 million in reserve dollars in the parking fund could not accommodate the project, parking user fees should be used to re-pay the project. The same was true with the storm water fee – the recommendation was for the creation of a utility supported by user fees spread based on pervious surface.

Anne Maring, District 1 thought parking should be a private venture. She said an economic analysis was lacking for a parking garage and for storm water. She also had concerns about losing the historic nature of the City and open space.

Sally Miller, District 6 and Parking Committee member, said the parking garage was in planning for many years and it would be a profitable enterprise for the City.

Donna Means, District 5, asked if the parking garage was really needed. She has no issues trying to find a parking space except during the school year during the day. She agreed there should be some benches and possibly a public restroom.

The discussion was returned to the table.

Mr. Markham commented that most business people state parking was the main issue for customers and employees.

Mr. Morehead relayed comments from the owner of Grassroots who said there was a perception of difficulty in parking which kept some people from coming to Newark. He thought the public perception was this was the public's money and that the City had other things to do with this money. He thought there were other issues that were more important – people's houses were being flooded all over town and there was talk about addressing that but the storm water sewer situation (whatever improvements are made) would not address flooding in District 1 – that was a stream issue and houses built in the flood plain and a completely separate issue and there were several hundred houses involved. To spend \$1.2 million, he wanted the information in front of Council today to have a broader discussion and have the information updated – have a more recent parking study done to actually understand the situation.

Mr. Chapman said if a parking garage was built, parking is a revenue source. In comparing Newark to Philadelphia where every lot is owned by a separate individual or group, the cost to park for short periods of time is high. The fact of the matter is that 35-40% of the City's budget relies on the sale of electricity. By purchasing this parcel, the value of conjoined land is greater than spots here and there. The City buying the land protects it from exactly what valuable land is right now and why that parcel is valued where it is. Eventually someone else would buy it to make more apartments and retail space that many have objected to. This gives the City an opportunity to hold the land and figure out the best use for it. The acquisition of the property is an asset, a net positive for the City and provided more options. A garage is not a foregone conclusion. He did not see a downside to purchasing the property.

Mr. Ruckle frequently heard comments about the lack of parking. He felt the City's long term view should be to get the home town feel back with benches, families walking down Main Street and perhaps no parking on one side

Mr. Gifford commented that the Financial Workshop detailed the order the City should approach projects and asked how this ranked on the chart of responsibility. Mr. Vitola said generally public works and public safety projects received priority funding. Mr. Gifford asked if this money could be moved since it was in the parking coffer. Mr. Vitola said technically it could with Council action with the exception of the parking waiver money. Mr. Gifford asked if Mr. Vitola had to increase parking fees to make the numbers work. Mr. Vitola said yes, but marginally –meter rates per hour were currently \$1.25 and off-street parking was \$1.00. It was anticipated to move off-street parking in the garage up to \$1.20. Mr. Gifford wanted more information before he would be ready to vote on this and hoped Council would allow him two weeks to look at those numbers.

Mr. Vitola pointed out that the agenda item was the land swap contract and Council was not being asked to approve a garage at this point. Even if the City acquired the land and no garage was built it was still a positive impact for the City.

Ms. Hadden requested the question be called.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: REGARDING THE APPROVAL OF THE REAL ESTATE AGREEMENT WITH EXPONENTIAL DEVELOPMENT GROUP LLC FOR THE PARKING GARAGE PROJECT.

MOTION PASSED. VOTE 5 to 2.

Aye: Chapman, Hadden, Markham, Ruckle, Sierer.
Nay – Gifford, Morehead

7. 1. ITEMS NOT ON PUBLISHED AGENDA:
A. Public

01:20:35

John Morgan, District 1, distributed a handout regarding the concentration of air pollutants in the immediate vicinity where they were emitted at ground level versus if they were being emitted from a very tall stack. Another handout showed the concentration of pollutants at ground level from the stacks 50 meters high peaked around 1,300 feet away. Thus the concentration of air pollutants at ground level within several hundred yards of the stack was very low. He thought the main concern was that the stacks were much too low from the standpoint of impairing Newark air quality.

Anne Maring, District 1, asked for revocation of the zoning verification, believed Main Street was no longer family friendly, and was disturbed that Mr. Gifford was not granted additional time to consider the Exponential Development Group agreement.

Jen Wallace, District 3, thanked the Police Department for responding to NRAPP sign thefts. She asked that the 6/2 special meeting be moved to accommodate more residents. She appreciated the Planning Director's letter on the website and wanted the zoning verification withdrawn until discrepancies were discussed.

Miranda Wilson, District 4, thanked NPD for their help with a sign theft and the Planning Director and hoped this was a step in revoking the zoning verification.

Martin Willis, New Castle, expressed concern about a letter to the University of Delaware Trustees. Ms. Sierer said the letter did not relate to City business.

Jeff Lawrence, District 3, felt Council was disrespectful to their colleague and reminded them they represent their constituents.

Donna Means, District 5, thanked Ms. Houck and Ms. Feeney Roser for information released on the TDC air permit application and referenced discrepancies.

8. 1-B. ELECTED OFFICIALS: None

9. 1-C. UNIVERSITY

01:44:35

(1) Administration – Caitlin Olsen, UD Assistant Director of Government Relations reported on UDon't Need It and UD commencement. Mr. Markham asked whether the task force completed their draft report on TDC. Ms. Olsen did not have it.

10. 1-C-2. STUDENT BODY REPRESENTATIVE: None

11. 1-D. LOBBYIST

01:48:39

Mr. Maxwell responded to several items. House Bill 333 sponsored by the House Speaker – the municipal taxing powers bill heard in hearing and the DE League agreed to strike section 3 after negotiating with the speaker. It was also agreed there would be amendments making sure everyone understood there was a grandfathering for all municipal charters for fees and taxes. Some municipalities asked for new or additional revenue to what the Code currently states that 15% of assessed value was the max on property tax. From time to time municipalities ask for authority in their Charters to enact telecommunication fees and the Legislature never agreed to that request.

Mr. Markham did not see the need for the bill since it was defined in the charter and the State Constitution. Mr. Maxwell said it was politics. There was no reason why any municipality would want the bill passed. Mr. Maxwell said it had an unintended consequence of sending a poor message about home rule. It involved one municipality, a legal decision and a prominent developer. Mr. Maxwell's advice to Council was to vote their conscience. Amendments would be introduced sometime next week.

Ms. Sierer thought it was important for Council to give staff and Mr. Maxwell direction regarding whether there were major changes to Amendments A and B – our thoughts on that so the City can respond quickly.

A letter was sent on 5/13/14 by Deputy Mayor Markham to the Newark delegation stating that the City unanimously opposed HB 333.

Mr. Markham understood Amendment C was gone but perhaps the Delaware League could reach out to the City to let the City know why this bill was not a positive.

Regarding Senate Bill 226, Mr. Maxwell said this is a transparency bill which required DEMEC and the Delaware Electric Coop, two non-investor owned companies that provide electric service in Delaware, and they were being asked to provide a break out of the actual costs for Bloom Energy on a monthly basis. There was a lot of criticism of Bloom on the part of some organizations in Delaware. There was concern about the costs associated and they were including a list of five other areas that have to be disclosed in terms of each customer's bill stating the exact monthly charge as a result of renewable portfolio standards and low income assistance for heating and electric – each one of those is called for in the legislation. There was ongoing discussion as to whether DEMEC would be asking for an amendment or exclusion from the bill. Section 1309, Title 22 of the Delaware Code (passed in 1968) states, "...the Delaware Public Service Commission shall have no supervision or regulation over any municipal electric company formed pursuant to this chapter or over the budget, operations, rates, property, property rights, equipment, facilities or franchises ..."

In response to a question raised by Mr. Morehead, DEMEC does not pay the Bloom fee. Ms. Houck said the itemization of things on the Delmarva bills related to Bloom; the City itemizes other things on its bills.

The March, April, May DEFAC meetings which have been monitored carefully by the City to see some change in the revenue projection has not been good. The last DEFAC report was \$41 million projected loss or less revenue – that will have to be made up in the next 13 days. \$104 million in salary savings and cost-cutting measures have been found. There was no legislative will to support the gas tax or the water tax. Mr. Markham asked if there was a threat to the street fund or municipal grant in aid. Mr. Maxwell said it was still there and the bond bill would be the last thing done on June 30. Mr. Maxwell recommended working to get the payment in lieu of taxes initiative done.

Senate Bill 191 was signed by the Governor – it was a downtown development initiative where three districts would be selected for projects, one in each county. The fund of \$7 million was designed to encourage private sector development.

In the Governor's budget address in January a 1% increase (\$20 million) for all state employees was agreed to and that was adjusted by being delayed until six months later at a savings of \$5 million.

House Bill 321 laid out a clear agenda for what the Attorney General should be doing to educate, support and train municipalities, particularly with FOIA requests. Mr. Maxwell stated the Federal FOIA statute had a section addressing frivolous requests.

12. 1-E. CITY MANAGER

02:16:22

Ms. Houck provided a McKees Park solar project update. Approvals were in process for additional site work necessary for erosion control to meet State standards. Final approvals were expected from DNREC in relation to the shed that housed the mechanicals. In the near future site work would be started and panels installed.

Newark was recognized with a gold level designation for its community health promotion. Items submitted that led to the award – trails, bike plan and initiatives, Newark Bike Project, infrastructure, a healthy Newark initiative with restaurants in recent months, park clean ups, skate spots, camps, etc.

Mr. Emerson and the Parks and Recreation staff were recognized for doing a great job with the community garden meeting.

At the Newark Police Department promotion ceremony Christopher Jones and Michael Watson were both promoted to Master Corporal.

Efforts were underway to replace contractor plantings on Elkton Road/South Main Street that did not survive the winter.

13. 1-F. COUNCIL MEMBERS

02:19:43

Ms. Hadden

- Attended the police promotion ceremony and the Memorial Day ceremony at the Delaware Veterans Memorial Cemetery.
- At Wilmington's 2014 Memorial Day Parade Marine Corps Gunnery Sergeant Edward Arlo Willing who disappeared in Vietnam in 1968 was named Honorary Grand Marshall. Nancy Willing, Sgt. Willing's sister would represent her brother in the parade.

Mr. Gifford

- Attended the Newark Memorial Day Parade and the DEMEC meeting, looked forward to the environmental presentation, would be attending College Park and Arbour Park civic association meetings and enjoyed his Newark parks tour with Mr. Emerson.

Mr. Chapman

- Announced "Keep Kids Alive Drive 25" stickers were available to be placed on refuse containers.

Mr. Markham

- Recognized former Deputy Mayor Clifton at the meeting.
- Attended Newark Memorial Day Parade and recognized those who lost their lives in service to our country.
- LED lights were now above the dais.
- Energize Delaware was back in business with low income loans and grants for energy savings.
- Requested warning signs about upcoming road work on Paper Mill Road.

Mr. Morehead

- Attended the community garden meeting where 65 individual plots would be available on a first come, first served basis at a fee of less than \$50/year beginning with the 2015 planting season.

- Attended DEMEC Board of Directors meeting – the Board received a FOIA presentation from their law firm. Since they were set up by direction from the State Legislature they were a government body and subject to FOIA.
- Attended a stream restoration meeting by DNREC in conjunction with Public Works – it focused on the Christina Creek in Districts 1 and 5 as well as areas outside the City. He noted a number of District 1 residents came hoping this would be the solution for their flooding issues where the houses actually are underwater. It was not that, it was a property protection plan for a handful of individual properties where the stream was trying to meander and form oxbows and eating towards the private properties. The State planned to spend about \$1 million to address the protection of those individual properties. There were many other improvements that would address the profound impacts of the flooding (some of those were State projects) such as cleaning the culverts under the Barksdale bridge.

Mr. Ruckle

- Reported on the shooting in White Chapel and announced that he, former Council member Clifton and the Newark Police Department organized a community safety meeting at the Newark Senior Center on 6/17 at 6:00 p.m. followed by the Fountainview meeting at 7:00 p.m.
- Attended the Fountainview Memorial Day picnic who started a fund for benches.
- Will tour the Newark parks and he expressed interest in doing more community events that would focus on families.

Ms. Sierer

- Thanked Deputy Mayor Markham for chairing the 5/12 Council meeting.
- Attended the Bike to Work day celebration, the Police promotion ceremony and the Memorial Day parade.
- Met with Jared Wasileski who would put together a plan and present it to Council for a Box Tops for Education program in Newark, Dr. Patricia Marks, Executive Director of Meeting Ground in Elkton, regarding efforts towards homelessness in the community, and Staci Garber’s freshman Civics class at Newark High School and learned about projects and solutions for their program called Project Citizen which included thoughts, ideas and perceptions on violence, child abuse, suicide, assaults, drugs and gangs. Ms. Sierer felt they had good ideas and planned to work with them further.

14. 2. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

15. 3. **SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff
 - 1. Rental Housing Needs Assessment Steering Committee – Planning & Development Director

02:33:34

Ms. Feeney Roser discussed a path forward for the rental housing needs assessment study which was awarded in October 2013. The study was designed to focus on two phases. The first phase was a current rental housing supply analysis, rental units in the pipeline and the City’s future rental housing needs to determine if and when Newark will hit the rental housing market saturation point. In the past several years the City was inundated with rental housing development proposals and since the beginning of 2012 until tonight 714 new rental units were approved. Many have not yet been built and there were 80 new units in some phase of the development review process and would be coming forward to Council shortly. There were also conversations with potential developers about many other possible future rental housing projects. Ms. Feeney Roser believed the City was at a critical juncture and should try to find a way to answer the “how much is too much” question as quickly and effectively as possible. The community has also struggled with issues raised in dealing with student rentals and their impacts upon the quality of life in single-family dwelling neighborhoods by campus. In response to those concerns the City enacted legislation over the years to try to minimize impacts on the community and to limit their spread. This has been done by encouraging downtown mixed-use development which is first-floor commercial office space with rental or other housing above. Laws have also been passed for occupancy limits, property maintenance, rental permits and inspections programs and the student home ordinance. Programs have also been developed to encourage owner occupancy.

Accomplishments have been mixed. There has been success in encouraging high quality rental development in downtown and the surrounding area, contributing to market saturation concerns. There are still serious issues surrounding rental housing in neighborhoods. There is a frustrated owner-occupant population in neighborhoods with a lot of student rentals because they believe current ordinances are not strict enough or not enforced well enough to protect the enjoyment of their homes. On the other side of the issue the City was sued by the Newark Landlords Association on what they believe to be unfair and overly stringent regulations. The lawsuit was settled but with a significant reduction in the permit fees the City can charge under the rental permit system and a directive from Judge Strine to work out remaining issues without resorting to Court action. In addition to the frustration cited by residents and by the Landlords Association about our regulations, staff also has concerns about the difficulty in enforcing them, particularly occupancy restrictions and interior rental unit inspections which are difficult to enforce and extremely time consuming and labor intensive.

While studying rental housing saturation, Phase 2 was designed to study and analyze these issues as well as home ownership promotion programs and to review best practices elsewhere. The contract for the study was awarded to Urban Partners on October 14. Since that time staff had been attempting to form a Steering Committee for the study. There was a lot of discussion about the composition of the Steering Committee and its role in the study. Most of the concern appears to be how the proposed Committee members were selected and that the proposed make up would somehow skew the results of the study one way or another. This concern led to questions about the study itself, the consultant's approach and the affiliations, intent and effectiveness of some of the volunteers willing to serve on the proposed committee as well as staff's objectives and involvement. Council discussed the matter at a meeting at the end of January and provided direction that the Steering Committee should be more geographically represented and would benefit by a Public Housing representative. Therefore, the direction was to add a representative from each Council district not already represented, to add a Newark Housing Authority appointment and to reduce the number of staff involved. The result was the 15 member proposed committee. The committee make up was discussed again at the 3/17 Boards and Commissions Council workshop. During that workshop Council asked staff to contact the consultant to determine if a Steering Committee was needed for Phase 1. The consultant responded that it was a best practice to have a Steering Committee for both phases of the study but understanding the struggle of the City, they determined it was not necessary to have the same committee for both phases. They suggested developing a technical support committee of no more than six people who would provide the necessary information and oversight for Phase 1 and then to create a policy advisory committee of 10-12 people to facilitate the study of the City's housing policies, provide assistance with focus groups and provide feedback on Phase 2. This approach has merit because it would allow the appointment of a technical support committee for Phase 1 relatively soon and provide time to take advantage of the application process Council is considering for all boards and commissions for a Steering Committee for Phase 2. Alternatively, considering the concerns cited in the study's approach, the community's desire for additional input and the weighty topics to be considered in Phase 2, the City could move forward with Phase 1 only and go back to the drawing board for Phase 2. The approach would allow time to create a new RFP with additional direction and process and appoint a new Steering Committee that would satisfy Council and the public in order to move forward with the analysis and immediate critical market saturation concern and provide time to focus on Phase 2. The subject matter of Phase 2 was an ongoing concern for the community for quite some time. If the two phase committee approach was approved, then the technical Steering Committee selection to facilitate Phase 1 could begin. To ensure access to required information, staff recommended Deputy City Manager Andrew Haines, Planning and Development Department Development Supervisor Mike Fortner and UD Campus Planner and Architect Peter Krawchyk be appointed. Mayor Sierer could appoint two to three other members of the Newark community to serve and submit their names to Council for approval perhaps as soon as the next available Council agenda. It was important to note this technical committee, if appointed, would hold its meetings at night and they would be open to the public with a public comment section. The meeting format may alleviate concerns about the steering of the study in one way or another.

For Phase 2, alternate options were recommended as follows.

- Appoint a 10-12 member policy Steering Committee to oversee Phase 2 as it is written now. That selection process could begin now and be completed before Urban Partners completes Phase 1.
- Decide not to move ahead with Phase 2 as written and awarded to Urban Partners and begin the process for a new study to analyze the subject matter currently in Phase 2. This committee or committees could be appointed through the new application process.

Ms. Feeney Roser contacted the vendor to let them know the study would be discussed and asked what the recommended options for Phase 2 might do to their price structure. The response was their original price of \$32,420 remains intact for both phases provided Phase 2 is not changed or substantially delayed beyond the Phase 1 results. If the City went forward with Phase 1 only they would reduce the price to \$23,260. Therefore, staff recommended moving forward with the Phase 1 technical committee made up of City staff members Andrew Haines and Mike Fortner, Peter Krawchyk, an additional 2-3 representatives appointed by the Mayor with Council approval and either 1) appoint a committee complete Phase 2 as it is now written in a timely manner or 2) cancel Phase 2 with Urban Partners and restart the process.

Mr. Markham said his concern was not with Phase 1 which was purely data collection. His concern was when you have recommendations things have been filtered from that data to make a list of ideas of how to move forward and whether that has enough representation from the community. Ms. Feeney Roser explained the recommendations would come to Council from the consultants. Ms. Sierer added Council will have data in addition to the recommendations to be able compare.

Regarding the other members appointed by Mayor Sierer, Ms. Hadden asked if there was direction from the consultant as to what qualifications would be good for the data collection. Ms. Feeney Roser said they were looking for people who understood the Newark rental housing market. Mr. Ruckle suggested a property manager or realtor. Ms. Sierer thought suggestions from the consultants would be helpful.

Ms. Hadden liked moving forward with Phase 1 and using the new committee task force criteria worked up by the City for Phase 2.

Ms. Feeney Roser said the question would be to go ahead with the Urban Partners study with a policy Steering Committee to be determined through the process, not to start all over again. She wanted to move forward with Phase 1 – P&D approved 114 units since Council approved the contract waiting to put the Steering Committee together. The issues were really about Phase 2.

Mr. Gifford reviewed the number and timeline of new units approved. If there was room for more apartments, part of Phase I was to tell us what types of units they should be because recently density was increased for smaller units and where they should be located. Mr. Gifford asked what could happen if someone wants to build a new unit that is zoned properly. Ms. Feeney Roser said downtown there is the Special Use Permit so if it is detrimental, Council would not have to approve it. Outside downtown the City does not have a SUP yet, that might be one of the recommendations. Mr. Gifford did not understand how much this was going to give us for the effort we would put into it.

Mr. Morehead stated one of the things being reviewing was as students migrate to the newer properties, what happens to the neighborhoods those students left. It gives the Planning Department information they need to be able to plan such as to do we need neighborhood revitalization, etc. Mr. Gifford thought the market for these housing units should determine themselves. The \$20,000-\$32,000 was after approving 700 units. In 2013 the City approved more units than they had in the last 12 years combined. About the point of letting the market decide, that's what has been done for years. The concern is the banks are not loaning money for fee simple or condos or but are for rental housing and are determining more of what developers can build since the crash.

Mr. Chapman said the market approach has been used for too long in the City and that is not what his constituents are asking for nor what they had been asking for prior to his being elected. What they are asking for is for the legislative body to direct proactively what type of development we want that will be beneficial for the future, to

look far enough down the road and put the necessary blocks in place if necessary. Previous Councils have shied away from taking those actions. As he understood it, Phase 1 of the project would provide empirical data with the value of an outside specialty perspective to then take the next step to absorb all the qualitative information and combine thoughts of stakeholders around the City to take the empirical data and mix it with the qualitative stuff and help fashion what those future changes should be and to become proactive in the realm of development so that we are no longer reactive.

Mr. Gifford stated that we have the Comprehensive Plan but then we rezone to put those units in, so we don't have the fortitude to stick to the plan. We make decisions and then change them anyway and now we think we may have too much rental housing. We can go through a study but oftentimes we don't follow our own plan.

Public Comments:

Brett Zingarelli, District 4, thought the City should not overrule the free market.

Donna Means, District 5, felt there were enough apartment and townhouse rental units. She said what was needed for rental units was single-family houses. If the expenditure was approved for the study, she believed a traffic study should be part of it.

Anne Maring, District 1, felt the data and the composition of the Phase 1 committee were critical, and there should be representatives from each Council district.

Ron Walker, Kells Avenue, was excited about the study and concerned about an excess of rental properties in the City. He was involved with the issue of single family homes being sold and rented to students. He hoped the study would include the impact that would occur with newer facilities and less interest in the older housing. He thought Council should consider a moratorium on construction until completion of the study.

There being no further comments, the discussion was returned to the table.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO PROCEED WITH PHASE 1 OF THE RENTAL HOUSING NEEDS ASSESSMENT STUDY AS RECOMMENDED BY THE PLANNING & DEVELOPMENT DIRECTOR.

MOTION PASSED. VOTE: 5 to 2.

Aye: Chapman, Hadden, Markham, Morehead, Sierer.
Nay: Gifford, Ruckle.

**16. 3-A-2. NOISE ORDINANCE RESEARCH UPDATE – CITY MANAGER
(See Item #4)**

- 17. 4. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
A. Bill 14-15 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating Management Classifications and Fringe Benefits

03:12:24

Ms. Bensley read Bill 14-15 in its entirety.

Mr. Haines reported there was a discrepancy on Amendments 2 and 3 of the bill. He requested coming back with a cover memo to further clarify what could be an amendment on the floor so the bill did not have to be re-advertised from a cost standpoint. He asked that Council consider a postponement until the 6/9 meeting.

Mr. Gifford questioned Amendment 4 whether the use of the title City Secretary/Treasurer was still appropriate. He questioned the 12 holidays vs. 10 holidays. Mr. Haines clarified this reflected the total number of holidays.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT BILL 14-15 BE POSTPONED TO THE 6/9/14 COUNCIL MEETING

MOTION PASSED UNANIMOUSLY.

VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

18. 4-B. BILL 14-16 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADDING REQUIREMENTS TO COMPLETE A DRUG AND ALCOHOL EVALUATION AND A PROGRAM OF EDUCATION OR REHABILITATION FOR INDIVIDUALS CONVICTED OF DRIVING UNDER THE INFLUENCE UNDER THE AGE OF 21 IN COMPLIANCE WITH DELAWARE STATE CODE

03:16:19

Ms. Bensley read Bill 14-16 in its entirety.

MOTION MR. MARKHAM, SECONDED MR. CHAPMAN: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 14-16.

Mr. Herron reported this was an amendment to the ordinance which prohibited those under 21 from operating a vehicle after consuming alcohol. Under the City's Code the penalty for this offense was 60 day loss of license and fine. The corresponding State statute now required completion of a drug and alcohol evaluation and the attendance of classes before the license can be reinstated. The amendment imposed the additional requirement in the City's Code and was specific to the zero tolerance ordinance.

Mr. Ruckle questioned the age requirement. Mr. Herron said individuals over 21 were required to complete a similar, more intensive program.

The City cannot simply reference State Code because that took it away from Council who had to consider amendments to ordinances.

Public Comments:

Brett Zingarelli, District 4, asked if a minor violated the zero tolerance but also had a high enough blood alcohol content to be considered a DUI, would he then have to complete zero tolerance and the DUI commitment. Mr. Herron's understanding was the officers in that situation would not arrest an individual for separate violations.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY.

VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

(ORDINANCE NO. 14-14)

19. 4-C. BILL 14-17 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, CODE OF THE CITY OF NEWARK, DELAWARE, BY DESIGNATING PORTIONS OF RITTER LANE AS “NO PARKING ANYTIME” (See Item 6-A-1)

03:22:39

(Note: The public hearing for this item and the resolution, item 6-A-1, were held at this time.)

Ms. Bensley read Bill 14-17 in its entirety.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL NO. 14-17.

Chief Tiernan advised that a petition from residents of Ritter Lane and adjacent properties. The intent of the petition was to prohibit parking and designate Ritter Lane between Orchard and Townsend Roads as a special residential parking district. The Traffic Committee reviewed the petition at its 4/15 meeting and voted to recommend to Council that parking be prohibited as requested.

Council Comments:

Changes appealed those in opposition as some residents closer to Apple Road were not in favor of the initial change but did not object to this location. The adjacent corner properties to Ritter Lane were notified of the hearing. When the special district parking signs are installed, letters will notify residents to obtain permits. The variable message sign will be placed and warnings would be issued before enforcement.

Public Comments:

Carla Simmons, District 4, thanked Ms. Hadden and the Police Department for their assistance with nuisance crime issues and student parking.

Question on the Motion (Bill 14-17) was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

(ORDINANCE NO. 14-15)

20. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** None

21. 6. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. **Council Members:**

1. **Resolution 14-__:** A Resolution Designating Ritter Lane Between Orchard Road and Townsend Road as a Special Residential Parking District (*See Item 4-C*)

03:30:01

(See Item #19)

MOTION BY MS. HADDEN, SECONDED BY MR. GIFFORD: THAT THE RESOLUTION BE ACCEPTED AS PRESENTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

(RESOLUTION NO. 14-T)

22. **6-A-2. FURTHER DISCUSSION OF COUNCIL'S PRIOR MOTION REGARDING TDC'S INFRASTRUCTURE GRANT APPLICATION AND POTENTIAL MOTION TO SET A SPECIFIC DATE FOR COUNCIL'S DETERMINATION OF WHETHER THE PUBLIC SPONSORSHIP REQUIREMENTS OF THE PROJECT ARE SATISFIED – COUNCILMAN MOREHEAD**

03:30:34

Mr. Morehead said when TDC was discussed on 4/28/14, Mr. Gifford introduced a motion that the City asking TDC to submit an updated and amended application to the Delaware Infrastructure Investment Committee reflecting changes and updates to the original grant application including the routes for the proposed gas pipelines.

TDC was advised Council would review the amended application at a future meeting to determine whether the public sponsorship requirements of the project were satisfied. A response to the motion was due by 5/9. To date, no response was received.

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: THAT CITY COUNCIL SET A DATE OF 6/23/14 TO REVIEW WHETHER THE PUBLIC SPONSORSHIP REQUIREMENTS OF THE DELAWARE INFRASTRUCTURE INVESTMENT COMMITTEE'S GRANT TO TDC ARE MET AND WHETHER THE CITY DESIRES TO CONTINUE ITS PUBLIC SPONSORSHIP. I FURTHER MOVE THAT THE CITY NOTIFY TDC OF THE DATE AND TIME OF THE MEETING AND NOTIFY TDC THAT THE CITY COUNCIL WILL CONSIDER REVOKING THE CITY'S PUBLIC SPONSORSHIP OF THE GRANT AT THAT MEETING. TDC IS INVITED TO APPEAR AND SHALL BE PERMITTED TO MAKE ANY PRESENTATION IT SO DESIRES IN SUPPORT OF THE CITY'S CONTINUING PUBLIC SPONSORSHIP OF THE GRANT ON 6/23/14.

Public Comments:

John Morgan, District 1, highlighted inconsistencies in jobs numbers in the grant application with the air permit application. He felt if the City were to continue to be the public sponsor of the grant application that contained a falsehood, which was fraud. Dr. Morgan also was concerned that the term would enable large interstate pipeline companies under Federal law to start exercising eminent domain in Newark which was the danger of public sponsorship of a project that involves large interstate pipelines.

Anne Maring, District 1, recommended that the City focus on long-term economic health and felt the jobs forecast by TDC were exaggerated.

Vince D'Anna, District 5, referred to the resolution about the TDC purchase power agreement and felt the City interfered with a contract between two parties.

Amy Roe, District 4, agreed it was important to set a time frame.

Martin Willis, New Castle, spoke about the grant and bringing jobs to the State.

Donna Means, District 5, questioned the accuracy of TDC submitted information.

Nancy Willing, District 3, encouraged Council to approve the motion for the deadline. She felt the City was right to demand the application be resubmitted since there were questions TDC had not yet answered to the DEDO Infrastructure Committee.

Council Comments:

Mr. Chapman asked the status of the TDC extension. TDC put in a request for a one-year extension to DEDO's Infrastructure Grant Committee. That request had not been voted on and the request was not yet extended or denied. The conditions were that they would satisfy the purchase power agreement and the zoning verification.

Ms. Houck would check with DEDO as of 6/2 to determine if any decisions were made on TDC and copy Council so they can see the response when it comes back.

Question on the Motion was called.

MOTION FAILED. VOTE: 3 to 4.

Aye: Chapman, Gifford, Morehead

Nay: Hadden, Markham, Ruckle, Sierer.

23. 6-B. **OTHERS:** None

24. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS:**

A. Recommendation to Award Contract 14-04 – 2014 Street Improvement Program

04:02:48

Mr. Coleman presented the memo dated 5/13/14 wherein it was recommended to award Contract 14-04 to Fontana Concrete Contractors. Five bids were received and Fontana Contractors was the low bid for the total price of \$982,552.25 which was in line with estimates and under the available funding for 2014. Fontana performed well in previous contracts for the City. They were the low bidder for the 2014 ADA handicap ramp program. Funding was coming from the Community Transportation Fund Bond Bill from local representatives and senators and the internal annual street program budget.

Council Comments:

Mr. Markham clarified this was more in concrete work but was also paving. Roads were chosen using the annual ratings from the road surface management system and the roads were scheduled to optimize return on investment using either a 2" mil or a 3.5" full repair. Coordination was done with water line replacement. Mr. Markham requested Mr. Coleman look at Center Street. Mr. Chapman asked if this was or would be amended due to a reduction in municipal street aid. Mr. Vitola said there was \$1 million in the budget. At the start of the year only \$500,000 of that was reserved. Over the course of the first and second quarters of calendar year 2014, another \$250,000 will be picked up. The last \$250,000 depended on the State's FY2015 award. The worst case would be a total of \$750,000 for projects and then none for the first half of the City's FY2015. Ms. Hadden asked in the situation where the University was doing construction and thereby damaging the roads, did they assist with repairs. Ms. Houck said Academy was a good example where the University paid for some of the repairs following continual construction prior to the opening of ISE Lab. Mr. Gifford asked if the RSMS software was working well and Mr. Coleman explained the need for replacement software due to Windows 7 incompatibility. Mr. Chapman confirmed the City was able to reduce quantities in the contract if there was a gap in funding. Mr. Vitola clarified a portion of the award was related to street miles under the municipality's control and a portion of the award was related to the population. Currently the City received about

\$500,000 of the \$5 million award based on that spread. As long as the State did not drop the award below \$2.5 million, Newark would be able to apply \$250,000 of the award to 2014. The only danger would be if the State cut the award by more than 50%.

There was no public comment.

MOTION BY MR. CHAPMAN, SECONDED BY MS. HADDEN: TO AWARD CONTRACT NO. 14-04, 2014 STREET IMPROVEMENT PROGRAM, TO FONTANA CONCRETE CONTRACTORS, INC. IN THE TOTAL AMOUNT OF \$982,552.25 FOR THE BASIC BID NOT INCLUDING OPTIONS 1 AND 2.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

25. 7-B. CONSIDERATION OF APPROVAL OF REAL ESTATE AGREEMENT WITH EXPONENTIAL DEVELOPMENT GROUP, LLC/PARKING GARAGE PROJECT

(See Item #6)

26. 8. FINANCIAL STATEMENT: (Ending April 30, 2014)

04:19:56

Mr. Vitola presented the unaudited financial statements for the first four months of 2014. On a Citywide consolidated basis there was a \$1.5 million operating surplus, or about \$160,000 higher than the budget. The governmental revenues look much better than the first three months but still show a negative variance as a result of lower Court fines, lower parking meter receipts, lower permit revenue and transfer taxes. The expense side was about \$200,000 over budget. The larger encumbrance balances were still driving part of that overage. In addition to the non-cash encumbrances, \$75,000 was paid to New Castle County early in the year for the economic development partnership and also paid the second year of the TIGER Grant to DeIDOT in February of \$175,000. Snow removal expenses were higher than budgeted. In the enterprise funds the electric fund was driving a positive revenue variance while the water and sewer revenue were both slightly higher than the budget. The budget was developed with the full load of the higher volume in water due to the increased meter accuracy and that was being observed now even though not all the meters were in yet, so that was a positive sign. That positive variance was partially offset by expenses that were about \$176,000 over the budget due primarily to timing issues. The cash position at the end of April was \$27.8 million which consisted of \$800,000 in the Smart Meter accounts, \$6.1 million in the operating cash account and \$20.9 million in the City's cash reserves. Last month it was reported that some of the lost revenue due to the weather might not be recoverable – an update will be provided approaching the half year point. The encumbrances explain the budget overage early in the year. Mr. Vitola said expenses were not typically seasonalized which he planned to look at doing for the next budget year.

Council Comments:

Mr. Markham felt seasonalizing the budget was the correct approach. Regarding Smart Meters, he asked when Honeywell would be turning things over to the City. Mr. Vitola expected by the end of July the money should be spent through as planned. Customer Connect was going live June 2 and would be staged going to eCare and PAP customers in the first three weeks of June. The launch for the rest of the customers would then occur. Mr. Markham commented about solar billing which was all manual. All billing goes monthly as early as July with the ultimate goal to have consolidated billing.

There were no public comments.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE FINANCIAL STATEMENT ENDED APRIL 30, 2014 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

27. APPROVAL OF CONSENT AGENDA

04:28:32

- A. Receipt of Alderman's Report – May 13, 2014
- B. Approval of Council Workshop Minutes – May 5, 2014

Ms. Bensley read the Consent Agenda in its entirety.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

28. Meeting adjourned at 11:16 p.m.

Renee K. Bensley
Director of Legislative Services
City Secretary